

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 416 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No

STATE OF GUJARAT

Versus

MR.JATIN MODI

Appearance:

KN VALIKARIMWALA ASSISTANT GOVERNMENT PLEADER for Petitioner
SERVED for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 17/02/98

ORAL JUDGEMENT

This is defendant's Second Appeal.

None has appeared on behalf of the respondent.
Learned Assistant Government Pleader was heard and record was perused.

Brief facts giving rise to this appeal are that the plaintiff-respondent duly incorporated under the Indian Companies Act, 1913 filed suit for declaration and permanent injunction claiming occupancy rights over the land in dispute and seeking injunction against the defendant-respondent from enhancing the rent on

non-agricultural assessment of the suit land. The plaintiff owned cement factory in village Dwarka, district Jamnagar. Okhamandal taluka in the said district was formerly a part of Baroda State which was merged with Bombay State on 1.5.1949. The Bombay State was bifurcated giving rise to Gujarat and Maharashtra with effect from 1.5.1960. Okhamandal taluka is included in Gujarat State. Dwarka Cement Works carried on business of cement manufacturing and it obtained various rights concession and privileges from the Ex-Baroda State including the mining concessions. The dispute was regarding 32,284 sq.yds.land which was for constructing bungalows. The Commissioner, Okhamandal vide order dated 13.8.1924 granted permanent occupancy right on payment of Rs.4013/- and yearly rent assessed at Rs.336-4-9 ps. per sq.yd. Dwarka Cement Company went into liquidation. The liquidators granted and assigned all the factory buildings, quarters, bungalows by deed of conveyance on 11.3.1927 to Baroda State. In this way the Ex-Baroda State became owner of the factory, building, quarters etc. Ex-Baroda State being the owner of the factory building, bungalows and premises etc., conveyed to the Okha Cement Co.Ltd., through a conveyance deed dated 14.10.1929. In this view, Okha Cement Company had given all rights, title and interest possessed by liquidators of Dwarka Cement Company. Another deed of conveyance was executed on 6.7.1937 between the plaintiff and Okha Cement Company and under this deed all the rights, title and interest of Okha Cement Company were transferred to the plaintiff. In this way the plaintiff claimed permanent occupancy right in the disputed land. By order dated 1.11.1921, Vahivatdar of Okhamandal ordered to make an entry of the disputed land to be on lease for 40 years from 1.11.1921 under his order dated 17.10.1936 without assigning any reason. This entry according to the plaintiff was totally unauthorised against the order of the Commissioner granting permanent occupancy rights to the plaintiff. In 1959, the Mamlatdar, Okhamandal advised the plaintiff to apply for renewal of lease of the suit land. This letter of Mamlatdar was misconstrued by the plaintiff as there was one similar mining lease concession expiring in 1961. Thus in good faith the plaintiff in normal course applied for renewal of lease. However, the plaintiff discovered that wrong application was moved on the advise of Mamlatdar. The Government of Gujarat, however, decided to hold inquiry under section 37(2) of Bombay Land Revenue Code. Inquiry was conducted by Assistant Collector, Khambhalia who decided on 8.3.1968 that the plaintiff had no occupancy right over the disputed land. An appeal was filed by the plaintiff before the Collector, Jamnagar who vide his order dated

7.7.1969 dismissed the appeal and confirmed the order of the Assistant Collector. Accordingly, the suit for declaration and permanent injunction was filed.

The suit was contested by defendant on number of grounds. The main ground was that the suit is barred by limitation and also barred by section 11 of Revenue Jurisdiction Act. It was also denied that the plaintiff had acquired permanent occupancy right over the land in dispute. The validity of notice under section 80 of the Code of Civil Procedure was also challenged so also the jurisdiction of the trial court.

The suit was decreed by the trial court. An appeal was preferred which was dismissed by the first Appellate Court. It is, therefore, this Second Appeal.

In this appeal four substantial questions of law as formulated in the memo of appeal were accepted and formulated by this Court. The first question related to bar of Limitation Act. Second question related to the bar under section 11 of the Bombay Revenue Jurisdiction Act. The third was that the lower Appellate Court has substantially erred in law in holding that the inquiry under section 37 sub-clause (2) of Bombay Land Revenue Code was nullity. The last was that the lower Appellate Court was in error in decreeing the suit.

Having heard learned Counsel for the appellant and considering the judgments of the two Courts below I answer the above question as under.

There is concurrent finding of the two Courts below on proper assessment of oral and documentary evidence on record that the plaintiff has proved permanent occupancy right over the disputed land. This finding does not suffer from any error of law. If while recording this finding the result of the inquiry under section 37(2) of the Bombay Land Revenue Code was ignored by the lower Appellate Court, it again committed no illegality. Consequently my finding to the third question is that the lower Appellate Court did not commit any illegality in ignoring the result of inquiry under section 37 of clause (2) of the Bombay Land Revenue Code. There is no illegality in the finding of the two Courts below regarding permanent occupancy rights acquired by the plaintiff-respondent.

Coming to the first question viz. bar of limitation as well as second question viz. bar of section 11 of Bombay Revenue Jurisdiction Act, I again

find from the material on record that the suit was neither barred by limitation nor by section 11 of the Bombay Revenue Jurisdiction Act. There was some confusion regarding scope of section 11 of Bombay Jurisdiction Act, which was clarified in the case of Dallumiya Lalumiya Malek Vs. State of Gujarat, reported in 12 GLR Pg.668. In this case; scope of section 11 of Bombay Revenue Jurisdiction Act, was explained and the confusion existing prior to 1970 was clarified. It was laid down in this case that Mamlatdar is none else than delegate of the Collector. The Assistant Collector is also delegate of the Collector. If the inquiry is conducted under section 37(2) of the Bombay Land Revenue Code by Collector, the appeal will not lie to the State Government but it will lie to the Revenue Tribunal. If the inquiry is conducted by the delegate of the Collector then appeal will not lie to the Collector inasmuch as he cannot hear and decide the appeal against the order of his delegate. In such case also the appeal would lie to the Revenue Tribunal and not to the State Government. It was specifically observed that as against the result of inquiry made by the Mamlatdar the appeal will lie before the Revenue Tribunal. It was further observed in this case that if by misconception of law Appellant being misled by the statutory notice an appeal is preferred to the Collector against the order of Mamlatdar or Assistant Collector bar of limitation will not be attracted nor bar of section 11 of section 11 of Bombay Revenue Jurisdiction Act. In the case before me the Assistant Collector in the inquiry under section 37(2) of the Bombay Land Revenue Code passed final order on 8.3.1968 holding that the plaintiff had no permanent occupancy right over the disputed land. Appeal was preferred to the Collector before 1970 when the case of D.L.Malek Vs. State of Gujarat (Supra) was not decided. It is further clear from the material on record that the plaintiff was misled in filing appeal before the Collector. The Collector decided the appeal on 7.7.1969. The question is whether Article 100 or Article 113 of the Limitations Act will apply. On the strength of the aforesaid authority it can safely be said that the bar of limitation is not attracted nor bar of section 11 of Bombay Revenue Jurisdiction Act. The date of final order will not be 8.3.1968 but it will be 7.7.1969 when the Collector dismissed the appeal. The suit was filed in the year 1972. Article 100 of the Limitation Act, provides inter alia that to set aside the order of an Officer of Government in his official capacity a suit can be filed within one year from the date of the order of the Officer.

Article 113 of the Limitation Act is residuary Article which provides that in any suit for which no period of limitation is provided elsewhere in this schedule period of limitation will be three years from the date when the right to sue accrues.

Since the case before me is that the plaintiff-respondent was misled to file appeal before the Collector and not before the Revenue Tribunal residuary Article 113 will apply. In this view of the matter the suit is within limitation. Moreover since the plaintiff was misled in filing appeal before the Collector it cannot be said that the entire remedy of appeal provided and mentioned under section 11 of the Bombay Revenue Jurisdiction Act was not availed by the plaintiff-respondent. Section 11 of the Bombay Revenue Jurisdiction Act in the circumstances is also not attracted. On computing from 7.7.1969 the suit which was filed on 1.4.1972 was within limitation. I, therefore, hold that neither the suit is barred by limitation nor by section 11 of Bombay Jurisdiction Act.

The last question automatically in view of the above findings has to be answered against the appellant in the sense that the lower Appellate Court did not commit any illegality in granting declaration as well as injunction prayed for.

For the reasons stated above, there is no merit in this appeal which is hereby dismissed with no order as to costs.

Sd/-

m.m.bhatt